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PATENT APPLICATION

IN THE UNITED STATES PATENT AND TRADEMARK OFFICE

In re the Application of

Tetsuo KAWAMURA

Group Art Unit: 1795

Application No.: 10/582,342

Examiner: A. BARROW

Filed: June 9, 2006

Docket No.: 128335

For: FUEL CELL CATHODE AND A POLYMER ELECTROLYTE FUEL CELL HAVING
THE SAME

RESPONSE TO RESTRICTION REQUIREMENT

Commissioner for Patents
P.O. Box 1450
Alexandria, VA 22313-1450

Sir:

In reply to the May 12, 2009 Restriction Requirement, Applicant provisionally elects
Group I, claims 1-13, with traverse.

Applicant respectfully submits that there exists *a priori* unity of invention with respect
to claims 1-14, by virtue of the fact that claims 2-14 variously depend from claim 1. As
stated in Chapter 10.06 of the ISPE (*International Search and Preliminary Examination
Guidelines*):

Unity of invention has to be considered in the first place only in relation
to the independent claims in an international application and not the
dependent claims. By "dependent" claim is meant a claim which
contains all the features of one or more other claims and contains a
reference, preferably at the beginning, to the other claim or claims and
then states the additional features claimed (Rule 6.4).

Therefore, each dependent claim shares at least each element or technical feature of
independent claim 1. ISPE 10.07 further provides:

If the independent claims avoid the prior art and satisfy the requirement of unity of invention, no problem of lack of unity arises in respect of any claims that depend on the independent claims. In particular, it does not matter if a dependent claim itself contains a further invention.

Thus, for the present application, a lack of unity of invention may only be determined *a posteriori*, or in other words, after a search of the prior art has been conducted and it is established that all the elements of the independent claim are known. *See* ISPE 10.07 and 10.08.

The Office Action does not establish that *each and every* element of independent claim 1 is known in the prior art; rather, the Office Action merely discusses some of the elements of claim 1 (*see* page 2 of the Office Action). Therefore, Applicant respectfully submits that lack of unity of invention has not been established, and thus a restriction requirement at this time is improper.

Thus, withdrawal of the Restriction Requirement is respectfully requested.

Respectfully submitted,


James A. Oliff
Registration No. 27,075

Azza M. Jayaprakash
Registration No. 55,299

JAO:AMJ/lbg

Date: June 3, 2009

OLIFF & BERRIDGE, PLC
P.O. Box 320850
Alexandria, Virginia 22320-4850
Telephone: (703) 836-6400

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